

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

Adams

DEC 07 2012

OFFICE OF
MANAGING DIRECTOR

Melodie A. Virtue, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW
Fifth Floor, The Flour Mill Building
Washington, DC 20007

Re: Waiver and Refund of Application Fees (Bankruptcy;
47 C.F.R. §§ 1.1115(a)(5), 1.1119(a), (c) & (f), 1.1166(e))
Licensee/Applicant: Joli A. Lofstedt, Chapter 11 Trustee
for Tracy Broadcasting Corp.
Station: KOLT-FM
Application Filing Fees
Fee Control No.: RROG-11-00014092

Dear Counsel:

This responds to Licensee's *Request*¹ for a waiver and refund of application processing fees (*Application Fees*) that Licensee paid on March 22 and July 7, 2010, and November 14, 2011. For the reasons set forth below, we deny the *Request*.

Licensee asserts that under 47 C.F.R. §§ 1.1115(a)(5) and 1.1119(f), it is entitled to a refund of the *Application Fees*. It believes a waiver and refund are appropriate because on August 19, 2009, its predecessor, Tracy Broadcasting Corporation (*Tracy*), filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code,² and thereafter, on April 9, 2010, the Commission approved an involuntary assignment of the license from *Tracy* to the Licensee. Licensee relying on the Commission's broad statement that "[e]vidence of bankruptcy ... is sufficient to establish financial hardship,"³ reasons that because *Tracy* filed for bankruptcy, Licensee meets the standard of financial hardship and establishes appropriate grounds for granting the *Request*. The problem is that Licensee failed to demonstrate the "extraordinary and

¹ In re Matter of Joli A. Lofstedt, Esq., Chapter 11 Trustee for Tracy Broadcasting Corp., Petition for Waiver and Refund of Application Filing Fees (Jan. 3, 2012)(*Request*). Application for Involuntary, Pro Forma Assignment of Licenses Arising (Chapter 11 Bankruptcy), Motion for Waiver and Refund of Application Processing Fees, File No. 20100322ABD, 2010 Biennial Form 323, File No. 20100707IWQ and 2011 Biennial Form 323 File No. 20111114BRL (Jan. 3, 2012) (*Request*).

² Title 11, United States Code. See *Request* at 1-2 and Exhibit 2, U.S. Bankruptcy Court, District of Colorado, Voluntary Petition, Tracy Broadcasting Corporation, Case No. 09-27059-ABC with List of Creditors Holding 20 Largest Unsecured Claims (Aug. 19, 2009); In re: Tracy Broadcasting Corporation, U.S. Bankruptcy Court (D. Col. Case No. 09-27059-ABC), Order for the Appointment of a Chapter 11 Trustee (Feb. 3, 2010); In re: Tracy Broadcasting Corporation, U.S. Bankruptcy Court (D. Col. Case No. 09-27059-ABC), Order Approving United States Trustee's Appointment of Chapter 11 Trustee for Commercial Capital, Inc. (sic) (Fe. 16, 2010).

³ *Request* at 2, quoting Implementation of Section 9 of the Communications Act, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761-62 (1995).

compelling circumstances” necessary to outweigh the public interest in recouping the cost of the Commission’s services.⁴

By relying on only the barest facts evidenced by a portion of *Tracy’s* court filing, Licensee seeks a waiver based on its status as a bankruptcy petitioner. That is an approach based on a category, and it is insufficient. Indeed, the Commission does not categorically waive or defer fees,⁵ rather it considers waivers on a case-by-case basis and grants relief “only for good cause shown when such action will promote the public interest.”⁶ Moreover, even assuming Licensee made a requisite showing of *Tracy’s* financial situation from the initial petition, Licensee continues to bear “the burden of demonstrating that ... a waiver ... would override the public interest ... that the government should be reimbursed for that specific regulatory action of the FCC.”⁷ The Commission has stated, “[i]n most instances, the general public interest in reimbursing the government for services provided would far outweigh the private interest in waiving or deferring the small, incremental cost represented by [application] fees.”⁸ So even though “evidence of bankruptcy or receivership is generally sufficient to establish financial hardship, case-by-case review of fee waiver requests is necessary to determine whether a waiver would be in the public interest, even in bankruptcy cases.”⁹ We turn now to whether Licensee presented “extraordinary and compelling circumstances”¹⁰ justifying a waiver, and find it did not.

Licensee furnished only limited information in the form of *Tracy’s* bankruptcy petition (with a list of some creditors), and Licensee explained that its station “has been in bankruptcy since August 2009 and continues to be operated by the Trustee[, who] is charged with preserving the assets and license for the station ... for the benefit of the bankruptcy estate’s creditors.”¹¹ Licensee adds that “[a] refund and payment waiver will assist the Trustee with funding the costs of operating the station until [it is sold.]” Licensee, however, failed to provide any relevant information¹² concerning the bankruptcy proceedings after February 16, 2010. Thus, Licensee’s limited evidence aided only by its conclusion that the refund of *Application Fees* will assist the

⁴ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, 961 ¶ 88 (1987).

⁵ *Id.*

⁶ *Id.* Cf. See also Implementation of Section 9 of the Communications Act, *Report and Order*, 9 FCC Rcd 5333, ¶ 29 (1994) (“we have permitted waivers only on a case-by-case basis following a demonstration that the public interest overrides the private interest of the requestor.”).

⁷ 2 FCC Rcd at 961.

⁸ *Id.*

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989 ¶ 11 (2003).

¹⁰ 2 FCC Rcd at 958 ¶ 70 (Commission stating it interprets narrowly authority under section 8(d)(2) of the Communications Act to “grant waivers or deferral on a case by case basis ... upon a showing of extraordinary and compelling circumstances.”). Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090 ¶ 11 (2003) (“even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.”).

¹¹ *Request* at 2.

¹² See e.g., *In re Tracy Broadcasting Corp.*, 469 B.R. 55 (D. Colo. 2011)(Creditor’s security interest in operator’s general intangibles did not extend to proceeds from future transfer of license.).

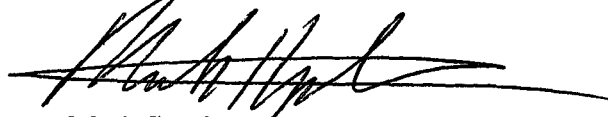
Trustee in performing its tasks fails to establish extraordinary circumstances for the Commission to determine that the waiver and refund of the fees serves the public interest.¹³

Instead, we infer from Licensee's *Request* and 11 U.S.C. § 503, which sets forth the process and procedures for allowing payment of administrative expenses, that either Licensee established to the satisfaction of the court that the fees were indeed proper administrative expenses of the estate or that the bankruptcy court provided Licensee with appropriate guidance permitting the Trustee to make payments without adverse impact. In either situation, without any evidence to the contrary from Licensee, we assume the court was satisfied paying the fees benefited the estate. Indeed, Licensee did not point us to any authority establishing entitlement to a refund of the fees paid. Moreover, Licensee offered nothing to alter the conclusion that allowable administrative expenses by definition are "actual, necessary costs and expenses of preserving the estate."¹⁴ Furthermore, Licensee provided no basis to consider whether Licensee's payment of the *Application Fees* was or may be an impediment to negotiations and transfer of the station to a new licensee.¹⁵

Finally, Licensee has the burden to show how the public interest will be served by refunding the *Application Fees*. Licensee failed to present any information on this critical point, which is noteworthy in the light of the nation's current financial situation, and where a waiver and refund of the Commission's application fees has the effect of subsidizing another administrative expenses permitted under 11 U.S.C. § 503. Accordingly, we deny Licensee's *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', written over a horizontal line.

Mark Stephens
Chief Financial Officer

¹³ See e.g., *In The Matter Of Mobilemedia Corporation, et al.*, Memorandum Opinion and Order, 14 FCC Rcd 8017, 8027 ¶ 40 (1999).

¹⁴ 11 U.S.C. § 503(b)(1)(A).

¹⁵ 10 FCC Rcd at 12761, ¶ 14.

Before The
Federal Communications Commission
Washington, D.C. 20554

In re Matter of)	
)	
JOLI A. LOFSTEDT,)	OMD Docket No. 86-285
CHAPTER 11 TRUSTEE FOR)	
TRACY BROADCASTING CORP.)	
(FRN 0019671932))	
)	
Radio Station KOLT-FM)	Facility ID No. 67474
Warren AFB, WY)	FILED/ACCEPTED

To: Office of the Secretary

JAN - 3 2012

Attention: The Managing Director

Federal Communications Commission
Office of the Secretary

Petition for Waiver and Refund of Application Filing Fees

Joli A. Lofstedt, Chapter 11 Trustee for Tracy Broadcasting Corporation (the "Trustee"), licensee of Radio Station KOLT-FM, Warren AFB, Wyoming, by her attorney and pursuant to Sections 1.1115(a)(5) and 1.1119 of the Commission's Rules, hereby respectfully requests that the Commission refund the payment of application filing fees submitted in connection with the following forms for a total refund of \$255.00:¹

FORM	FCC FILE NO.	REMITTANCE ID	AMOUNT
FCC Form 316 Involuntary Assignment of License	20100322ABD	1750626	\$135
2010 Biennial Form 323	20100707IWQ	1806289	\$60
2011 Biennial Form 323	20111114BRL	PGC2035619	<u>\$60</u>
		TOTAL	\$255.00

¹ A copy of the Form 159 Remittance Advice receipts and pay.gov confirmation emails are attached in Exhibit 1.

Because the station was in bankruptcy at the time those payments were made, the Commission's financial hardship standard is satisfied and good cause exists to justify waiver of the application filing fees and a refund of the previously submitted payments.

The Commission approved the involuntary assignment of the license from Tracy Broadcasting Corporation to the Chapter 11 Trustee on April 9, 2010. *See* FCC File No. BALH-20100322ABD. Section 1.1119 of the Commission's rules provides for a waiver of the need to pay application filing fees based on a financial hardship. The Commission has held that "[e]vidence of bankruptcy or receivership is sufficient to establish financial hardship." *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, 12761-62 (1995) (waivers granted for payment of regulatory fees for licensees whose "stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership"). Supporting documentation evidencing the bankruptcy is supplied in Exhibit 2.²

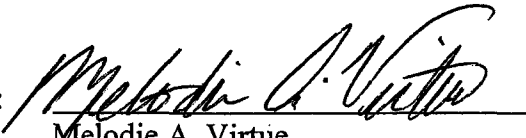
Good cause exists in this case to grant the refund request. The station has been in bankruptcy since August 2009 and continues to be operated by the Trustee. The Trustee is charged with preserving the assets and license for the station under supervision of the Bankruptcy Court in Colorado pending disposition for the benefit of the bankruptcy estate's creditors. The Trustee has limited resources to operate the station pending the sale of the assets. A refund and payment waiver will assist the Trustee with funding the costs of operating the station until the court and the FCC approve the sale of the station.

² The attached Exhibit 2 contains a partial copy of the Bankruptcy Petition filed August 19, 2009, and a copy of the Order Appointing Joli A. Lofstedt as the Chapter 11 Trustee, dated February 16, 2010.

Accordingly, the Trustee respectfully requests a refund of the application filing fees in the amount of \$255.00

Respectfully submitted,

JOLI A. LOFSTEDT, CHAPTER 11 TRUSTEE FOR
TRACY BROADCASTING CORPORATION

By: 
Melodie A. Virtue
Her Attorney

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January 3, 2012

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